

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

STEVEN B. BARGER,
Plaintiff,

-against-

FIRST DATA CORPORATION,
ET AL

Defendants.

- - - - - X

: 17-CV-4869(FB)
:
: U.S. Courthouse
: Brooklyn, New York
:
: TRANSCRIPT OF
: JURY TRIAL
:
: September 16, 2019
: 2:30 p.m.
:
:
:

BEFORE:

HONORABLE FREDERIC BLOCK, U.S.D.J.,
and a Jury

APPEARANCES:

For the Plaintiff:

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18 Proceedings recorded by mechanical stenography, transcript
19 produced by Computer-Assisted Transcript.

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21 (The following takes place out of the presence of
22 the jury.)

23 THE COURTROOM DEPUTY: Civil cause for trial, Steven
24 Barger versus First Data Corp.

25 I ask the parties to state your appearances please.

MR. SHEARER: Shawn Shearer and with me is David
Zeitlin for the plaintiff.

1 MR. ZEITLIN: Good afternoon, Your Honor.

2 THE COURT: Good afternoon.

3 And this distinguished gentleman here is?

4 MR. BARGER: My name is Steve Barger, Your Honor.

5 THE COURT: You're Mr. Barger. That's fine, you're
6 welcome to sit there. Lawyers can sit over there, that's
7 fine.

8 And let's hear from Mr. Eidelman.

9 MR. EIDELMAN: Good afternoon, Your Honor, Gary
10 Eidelman, Saul Ewing Arnstein & Lehr, along with our
11 colleagues, Gillian Cooper and Michael Cianfichi.

12 Next to me is Louis DiLorenzo.

13 MR. DiLORENZO: Yes, Your Honor, from Bond,
14 Schoeneck & King.

15 MR. EIDELMAN: Your Honor, if I can address the rest
16 at counsel table; sitting next to Mr. DiLorenzo is Jill Poole,
17 she's the corporate representative, she is a lawyer and the
18 corporate representative from First Data; sitting next to
19 Ms. Pool is Frank Bisignano, one of the defendants; Dan
20 Charron, the next defendant; Tony Marino, the next defendant;
21 and the last defendant is Rhonda Johnson.

22 THE COURT: Now, did you introduce everybody this
23 morning when the jury was selected?

24 MR. EIDELMAN: Yes.

25 THE COURT: I won't do that again, I'll leave that

1 to you who you want at your table and the defendants, of
2 course, are welcome to stay here, they are entitled to do that
3 and I leave that to you as a matter of trial strategy whether
4 you want to overwhelm the jurors with so many people sitting
5 at your defense table, that's a matter for lawyer judgment.

6 MR. EIDELMAN: Thank you, Judge.

7 THE COURT: So, we had the jury selected this
8 morning so the first order of business is whether everybody is
9 satisfied with the selection of the jury and whether I should
10 fire my law clerk or not.

11 What do you say, Mr. Shearer?

12 MR. SHEARER: Your Honor, the plaintiff is fine with
13 the jury. We're ready to proceed.

14 THE COURT: And it worked that well, I shouldn't
15 fire my law clerk?

16 MR. SHEARER: No, I think he did a pretty good job.

17 THE COURT: Good.

18 MR. EIDELMAN: He's no longer a rookie. We're
19 satisfied with the jury, Your Honor.

20 THE COURT: I say that facetiously, I'm sure he did
21 a good job. I'm sure he's a little bit nervous which is the
22 way he is supposed to be and I hear that he did splendidly.
23 I'm happy to see that.

24 So, you are satisfied with the jury. I figure at
25 this time we'll call the jurors in. What I'd like to do today

1 to get started is talk to the jurors 15 minutes or so just to
2 give them a little bit of a sense of how the trial is going to
3 proceed. I don't know how many of them have been jurors
4 before or not but I go through a little bit of the protocol of
5 what's going to happen and then we'll be finished by 3:00 with
6 that. Then I think we can have the opening statements today.
7 I don't see any reason why not.

8 Mr. Shearer, how long do you estimate yours will be?

9 MR. SHEARER: I would guess under a half an hour.

10 THE COURT: I just want to get a sense whether we
11 can get it done this afternoon.

12 MR. SHEARER: Yes.

13 THE COURT: You're going to speak, Mr. Eidelman?

14 MR. EIDELMAN: I am, Your Honor. We should
15 absolutely be able to get done this afternoon.

16 THE COURT: Okay, so we'll try to go in that
17 direction. We'll have our first witness ready to go tomorrow
18 at 10:00.

19 MR. EIDELMAN: Judge, if I may, I can mention it in
20 my opening if you like but we did say it is possible that some
21 of the individual defendants may have to be in and out of the
22 courtroom a little bit.

23 THE COURT: I'm going to mention it to them, I'll
24 talk about that and things will work out just fine. I'm going
25 to also compliment you on the fact that you worked very hard

Preliminary Remarks of the Court

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1 by meeting with me before the trial starts to work out the
2 exhibit list. So, the exhibits will be introduced into
3 evidence as you use them. My guess is that you're not going
4 to use them all because as good lawyers you're not going to
5 overwhelm the jurors with unnecessary paperwork, I'm sure of
6 that. So, as you use them, they'll be deemed in evidence and
7 we have one or two little things which we will be able to talk
8 about during the course of the trial.

9 So, let's bring the jurors in at this time.

10 (Jury enters courtroom.)

11 THE COURT: So, Mr. Carr, you happen to be sitting
12 in the first seat not because you're the best looking one or
13 you're the smartest one, though you may be both, it's just
14 that your name came up first, it is strictly by rote. You're
15 the person who may or may not be the foreperson at the end of
16 the trial. I will explain that to you a little bit more as we
17 go. Just relax.

18 In the meantime, all of you relax because my whole
19 purpose in talking to you now is to try to ease you into the
20 trial by telling you about what you can expect, some common
21 sense ABC things and a little bit about how the trial is going
22 to progress, how long it's likely to take, things that your
23 curiosity would want to know about, right.

24 But the first thing I'm curious about is how many of
25 you folks have sat as jurors before? I wasn't here during the

Preliminary Remarks of the Court

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1 jury selection, it was supervised by my wonderful law clerk.

2 Give me an idea, show of hands.

3 (Pause.)

4 THE COURT: So, we have three -- four out of eight.

5 Were they criminal or civil cases? Let's see

6 criminal.

7 A JUROR: Criminal.

8 A JUROR: Criminal.

9 THE COURT: All criminal?

10 A JUROR: No.

11 THE COURT: How many were not criminal?

12 Two civil, two criminal, so we have a mixed group
13 here and you know folks are selected for jury service strictly
14 on a random basis and sometimes we get prospective jurors who
15 have been here many times but sometimes not at all, I mean
16 it's just strictly the luck of the draw I guess but I'm very
17 proud to have the privilege of presiding over this trial with
18 you as my jurors.

19 Why do I say that. By the way, I guess I should
20 introduce myself. You might know that I'm the judge right now
21 because I'm wearing the black robe and my last name is Block,
22 B-L-O-C-K.

23 At the end of the trial you'll remember this case,
24 it is going to be an interesting trial, we have very good
25 lawyers but hopefully you'll forget the judge because the

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1 focus should be on the trial and not the judge. If you happen
2 to remember me, okay, but the point is to get you to think
3 about the case and about what happens here during the course
4 of the trial but I have to administer the trial, it's my
5 responsibility and we have now eight jurors in this civil
6 case. This is not a criminal case and it may or may not come
7 as a surprise to you that as far as I know, and I've had my
8 good law clerks research this many times, we are the only
9 country in the world that has jury trials for civil cases.
10 It's incredible. The last country that had it abandoned it a
11 few years ago, it was England, the UK, which is where we get
12 much of our common law from, traditions from. They have no
13 civil trials, just the judge decides the case except for one
14 situation, the Queen can sue you for defamation, you can't
15 defame the Queen, you can have a jury trial there.

16 Essentially we're it and you know you can debate
17 whether or not we should impose upon fellow citizens to give
18 up their time, their social life, their economic earnings in
19 many cases to sit as jurors and pass judgment on a fellow
20 citizen or fellow -- it doesn't have to necessarily be a
21 citizen but a person who comes to court, wishes to get his or
22 her rights resolved by his or her peers.

23 At the end of the trial I make it my practice to
24 come and make myself available to you after you've decided the
25 case to answer whatever curiosities you may have about

Preliminary Remarks of the Court

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1 anything that cropped up during the course of the trial that
2 you may be speculating about. You're not allowed to speculate
3 when you come to your decision but you may want to ask me some
4 questions afterwards, I'll make myself available, we can talk
5 a bit more, I can give you another civic lesson about how we
6 go about our business, what the federal courts are all about,
7 how you become a federal judge. The public, by and large,
8 doesn't have a lot of knowledge about that. I personally
9 don't think we do a good job raising our kids and educating
10 them properly about the justice system in our country, that's
11 my personal opinion. But I find most people, even those with
12 Ph.D. degrees don't even know how you become a federal court
13 judge, what's the difference between the state and federal
14 jurisdiction, why do we have 50 states with separate courts
15 and separate laws, why do we have a federal law, what's that
16 all about. So, it can be confusing so I try to at least give
17 some light while I'm here and I've got you as captive to get
18 you acclimated to the federal judicial system.

19 This is our federal courthouse. As you can see, it
20 is a beautiful courthouse and it's the people's courthouse so
21 anybody can come in here and open those doors to join us and
22 listen to the trial. It's open to everybody.

23 And so, why do we have juries and why do we have a
24 judge. So, I like to explain basically we're a team, one
25 without the other we cannot have a trial. We need both. We

Preliminary Remarks of the Court

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1 need the judge because he went to school for a long time, he's
2 been doing this for a while, he should know a little bit about
3 the law and we need somebody to be in charge of the law
4 department, to explain the law to the jury, to rule on
5 objections, evidentiary issues, things that we're trained to
6 do that you're not trained to do.

7 We need the fact finders, we need the jury. So, the
8 jury is in charge of the fact department, I'm in charge of the
9 law department. What does that mean. That means that the
10 jurors are going to decide where the truth lies. The jury is
11 going to listen to me explain the law to you at the end of the
12 trial when you hear all the evidence, all the witnesses have
13 testified, all the documents have been offered into evidence
14 that I'll allow into evidence, that's the evidence in the
15 case, and you're going to decide the facts.

16 Obviously there are different versions of facts
17 here, otherwise we would not need a fact finder, then it would
18 be up to the judge just to decide the legal issues in the
19 case. So, you are in charge of the fact department. At the
20 end of the trial when I explain the law to you as the person
21 in charge of the law department and give you your marching
22 orders to start your deliberations, I'm not going to be in
23 there with you, I have no place in that jury room with you.
24 Only you eight folks are going to decide the facts and apply
25 them to the law that I give you.

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1 So, you may see how this breaks down during the
2 course of the trial; for example, somebody is testifying here
3 and a question is being asked and then the lawyer gets up and
4 says: Objection, Your Honor, and everyone gets startled by
5 that. What the lawyer is telling me is that he doesn't think
6 or she doesn't think that that's a proper question to ask the
7 juror and I should not allow the juror to answer that
8 question: When was the last time you murdered your wife?
9 Well, it has nothing to do with the case, right. Objection,
10 sustained. So, I say sustained, it means don't answer the
11 question, okay. Objection overruled, that means I made a
12 legal decision based upon my knowledge of the law, it's a
13 proper question and the witness can answer it. So, you'll
14 hear that type of thing happening probably throughout the
15 course of the trial.

16 Now, lawyers should object when they feel inclined
17 to do so because they're not neutrals, they have an ethical
18 responsibility to do the best they can to represent their
19 clients. The plaintiff is representing Mr. Barger and the
20 defendants are representing First Data Corporation. You know
21 a little bit about that from what Mr. Morales told you during
22 the openings about the nature of this case a little bit.

23 So, they're not neutrals. The neutrals are the nine
24 of us, all right. The judge is a neutral, you folks are
25 neutral, we have no bias, we have no ax to grind. We're going

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1 to call the shots as we see them based solely on the evidence
2 and the testimony that you will hear during the course of the
3 trial. So, that's the ABC-s of how important we are together
4 to work as a team.

5 I like to also mention historically that we just had
6 another 9/11 holiday or anniversary, not a holiday, this past
7 week and I remember, because I've been here for a while now,
8 that before 9/11 when we went through the jury selection
9 process, you can pick out a bad apple once in a while,
10 unfortunately they were the younger people, not the older
11 people. You know, they may have said when they came to the
12 court, watch me get out of jury duty, I'll tell the judge I
13 have epilepsy or something like that, who knows why. We can
14 spot those, we used to get some of that. After 9/11 I rarely
15 see that anymore. It's almost as if there's a whole change in
16 attitude about taking our responsibilities as citizens
17 seriously.

18 You cannot be a juror unless you're a citizen. The
19 founding fathers, and the mothers I'm sure were there
20 whispering in their ear, thought it was so important that we
21 have juries in the United States on civil as well as criminal
22 cases that the one requirement they made is that you have to
23 be a citizen of the United States and the reason why they did
24 that is the same reason why they decided judges should be
25 appointed for life, because they came from a bad place, the UK

Preliminary Remarks of the Court

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1 or Great Britain and England in those days was not a happy
2 place and we all ran from that place to escape persecution,
3 the King was hanging people right and left, right. And they
4 wanted to make sure that the system of law that they
5 established in the USA was going to be totally independent of
6 politics and that judges can't be removed or hung if the King
7 doesn't like the way the judge handles the case and the
8 citizens know that they're going to get a fair shake when they
9 come to court, there's not going to be any politics, there's
10 not going to be anything at all other than the independence of
11 the federal judiciary, citizens of the United States
12 discharging their responsibility. So, they thought, the
13 founding fathers, that jury service was so important they put
14 it in the Constitution and that's one of the reasons why
15 because they didn't want the King to decide people's rights,
16 they wanted fellow jurors to decide it.

17 So, I like to give this little civic lesson, make
18 you people feel really important. You can't serve, I don't
19 think maybe one of you, two of you, you can't go over to
20 Afghanistan and fight for the country but you can give service
21 here as jurors, it's your opportunity to serve.

22 I think you're going to find it to be something
23 that's very special and you're going to remember this for a
24 long time and feel very privileged that you were selected to
25 be jurors in this case.

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1 At the end of the trial when I talk to you, I'll ask
2 you do you want me to go to Washington and lobby that we
3 should eliminate jurors in civil cases, what do you think. I
4 have been asking that question for a long time. What do you
5 think the answers are. People say, no, we like it the way it
6 is. So, we'll see what your answer is at the end of the
7 trial.

8 So, how is this case going to unfold. So, the
9 plaintiff has brought this lawsuit, you know what it's about,
10 it's a disabilities case claiming he was not reasonably
11 accommodated in his job and you'll hear all about that from
12 the lawyers and the witnesses. I'm not really a fact witness
13 so I'm not going to tell you anything about the case. It's
14 not my job, right. That's what the trial is all about.

15 But the plaintiff, since the plaintiff brought the
16 case, the plaintiff has the burden of proof. Now, you
17 probably know what the burden of proof is in criminal cases,
18 you all watched the big famous O.J. Simpson trial, right. In
19 a criminal case it's proof beyond a reasonable doubt, right.
20 But in civil cases it's a lesser burden, it's just a
21 preponderance of the evidence. Visualize those scales of
22 justice, if they tip ever so much in this direction, then the
23 plaintiff has sustained its burden of proof and I'll tell you
24 more about that at the end of the case when I go through all
25 the law with you that you should be aware of but right now I

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1 want to let you know the difference between a civil and a
2 criminal trial.

3 Also, you know in criminal cases, I've told you
4 this, the statutes of Congress that have been enacted to
5 govern our decisions require 12 jurors in a criminal case. In
6 a civil case we don't need 12 anymore, it used to be 12, and
7 in a criminal case we have alternates and only 12 -- you know
8 12 Angry Men, 12 angry women deliberate, the alternates listen
9 and then they're discharged afterwards if they're not needed.

10 A civil case I like better because everybody picked
11 will deliberate, no alternates. I like that you're hearing
12 the case and everyone is going to be deliberating and your
13 decisions have to be unanimous, interesting, right. You'll
14 hear all about that at the end of the day when I tell you my
15 final instructions. So, why do we have eight, because we must
16 have by statute six so we want to make sure we have a little
17 bit of latitude God forbid if someone gets sick.

18 The case is going to last several days, it's not
19 going to be three months, it's not going to be three weeks, it
20 will be here for a few days, certainly this week and probably
21 lapping over to next week. We don't know exactly when it's
22 going to end because it is not a scientific laboratory, we
23 don't know how long the cross-examination will be and whatever
24 unfolds but we have a general idea of the nature of the case
25 and the number of witnesses that I'm told will be testifying,

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1 we're talking about several days, not several months. You're
2 going to be here for a little bit of time, it's not going to
3 be too much of an imposition on your time but it is very
4 important that you give it your full attention.

5 So, since the plaintiff has the burden of proof, and
6 when I finish talking, which will be in about ten minutes
7 maybe, then the plaintiff's lawyer will stand up and deliver
8 what we call opening statements. Then defendants' lawyer who
9 will be speaking on behalf of the defendants will get up and
10 speak to you also. Those are the opening statements. We're
11 going to probably get that done this afternoon, should be
12 finished about 4:30. You'll go home, come back tomorrow
13 morning at 10:00 and we'll start with the first witness.

14 Now, when a lawyer speaks, remember the lawyer is an
15 advocate, the lawyer is not a fact witness so what the lawyer
16 says in his or her opening statements, closing statements or
17 whatever, it's not evidence, it is lawyer argument and the
18 lawyer should make his best efforts to argue on behalf of his
19 client, no question about it. So, because a lawyer says
20 something, it's not necessarily something that is factually
21 correct. It's for you to decide what the facts are.

22 So, when the lawyers get up and talk to you, the
23 purpose of opening is to give you a little bit of a road map
24 on what they expect to establish during the course of the
25 trial so you get oriented a little bit. You see, before the

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1 first witness is called you'll have an idea of what the case
2 is all about through the lawyers' perceptions. They're not
3 testifying as witnesses, they're just advocating and giving
4 you a little bit of a road map. They're not going to agree
5 with each other. If they agreed, we wouldn't need you. We
6 need you because they don't agree with each other. We're
7 going to find out where the truth lies and who you believe and
8 who you don't believe.

9 And while we talk about the evidence, one of the
10 important functions you have as fact finders is to size up the
11 credibility of a witness, do you believe the witness
12 partially, wholly, not at all. So, when the witness testifies
13 you know you're going to check the witness out, the verbal as
14 well as nonverbal communication and you be the fact finder on
15 the issue of credibility of the witness, okay, that's part of
16 your fact finding responsibilities.

17 Now, because the case is going to last several days
18 it's okay if any of you want to take notes. I don't see any
19 of you having paper and pencil with you now but you'll have
20 that available if you want to bring it into the courtroom.
21 You don't have to take notes, you can. Some people seem to
22 pay better attention when they write things down. Some people
23 seem to pay better attention to people when they testify when
24 you're looking at them instead of being distracted by writing
25 things down. Whatever your comfort level is, it's fine with

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1 me. This is not trial by who takes the best notes. If you
2 take notes, you keep them behind here, they're just for your
3 own personal use. You don't have to worry if anybody forgets
4 what a witness is testifying about, it's going to be several
5 days later, you don't have to guess because we're blessed in
6 our courthouse with wonderful court reporters and you can see
7 Holly is taking down everything that's being spoken by the
8 judge right now. So, if during your deliberations you don't
9 remember what witness X or witness Y said, you think it is
10 relevant, you want to hear it again, it's available for you,
11 we have it in black and white for you to have it read back to
12 you, okay, so you have that comfort level.

13 So, if you want to take notes, it's okay. You don't
14 have to. Generally in a long trial people like to take notes
15 just to keep track of events. In a short trial it's not as
16 important. Whatever your comfort level is, that's fine but
17 it's personal to you.

18 Now, you're not going to be sitting here 24 hours a
19 day seven days a week so you're going to be able to walk
20 around and you see folks here, you know who they are, they
21 have been introduced to you this morning, the lawyers are
22 there, the lawyers are professionals, they know that if they
23 pass you in the hall or in a restaurant, you never can tell
24 who's going to be sitting next to you, right, they're not
25 going to be talking to you not because they're snobs but

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1 because that's the right thing ethically not to do, you don't
2 want to have communication between the witnesses, the lawyers,
3 parties or anybody who's associated with the case. So, if you
4 see the folks, they'll just nod, they may say hello, that's
5 it, and even if somebody is 50 feet away and you don't know
6 what that person is talking about, we avoid the appearance of
7 impropriety. So, if you're talking to somebody and somebody
8 sees from 50 feet away that you're talking, they don't know
9 what you're talking about, so we avoid even the appearance of
10 impropriety. If you exchange common courtesies, good morning,
11 good afternoon, that's it, all right.

12 You're going to be free for lunch, about an hour, an
13 hour and a half, whatever. We'll probably break about 12:30,
14 it depends upon what's happening in the court. I'm in charge
15 of the administration of the court. If a witness has just
16 finished testifying, we'll take a break, otherwise we'll see
17 how it goes. It probably will be between 12:30 and 1:00
18 usually and then you're going to be going home at night. We
19 try to run from 10 to 5, all right. Some of my colleagues
20 start at nine, I'm not such an early bird, but I also find
21 10:00 works fine in New York because you avoid the rush hour.
22 Hopefully none of you are going to drive, I don't know where
23 all of you come from. I drive and I usually get here okay.
24 Once in a while I'm embarrassed to say I get stuck and I have
25 to apologize but I don't live so far away and I can go right

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1 into the courthouse garage. You may not have that same
2 opportunity. It is better if you take public transportation.
3 If you drive you really, really have to discount for the fact
4 that you can hit traffic. We want to start promptly at 10:00.
5 We want to all be here. Obviously common sense, if one of us
6 is not here, we can't start. One person may hold up everybody
7 and you don't want to do that. We all know emergencies
8 happen. You call Mr. Innelli, you'll have his contact
9 information, if there's an emergency just call and let us know
10 but otherwise we're all trying to be on time and start at
11 10:00. I'm telling you the person who has the hardest time
12 doing that is the judge. If I have to rate myself for the
13 quality of being a judge, I'll give myself ten on a scale of
14 one to ten in every category except one, when it comes to
15 tardiness I give myself a four and a half. For some reason I
16 have a hard time getting up on time but trust me, when it
17 comes to a trial when other people are waiting on me, I bust
18 my gut so I'm here at 10:00 also and if I'm not, boy, am I
19 going to have egg on my face. So, I think I can do a good job
20 of getting here at ten and so can you folks and you know why
21 it's important, so we can start at 10:00 promptly and not hold
22 the action up. If I'm not here by ten, I'll apologize
23 profusely, I may even resign as a judge for all I know. So,
24 we know how important it is.

25 When you get home for sure your loved ones, your

Preliminary Remarks of the Court

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1 significant others, your kids, whoever, are going to pepper
2 you about what kind of case it is and they're going to want
3 all sorts of information from you. It's natural that people
4 are curious, right, especially people you live with, right,
5 your best friends, and you'll be tempted to talk about the
6 case. You've got to resist that temptation. You have to tell
7 these good folks please, at the end of the trial I'll talk to
8 you from here to kingdom come and tell you whatever you want
9 to know. During the trial don't talk about the case. Why?
10 Because the only thing that counts is what's happening in the
11 courtroom, what the testimony is. You don't check the
12 internet out, you don't look at the newspapers, you don't
13 listen to television. If you hear anything inadvertently, you
14 tell Mr. Innelli about it so we can make sure that nothing
15 happened that would prejudice you to sit objectively as a
16 juror.

17 So, you can only consider what goes on in the
18 courtroom. So, if your loved one at home says, oh, that's
19 what kind of a case it is, let me tell you about this case.
20 Now you've gotten some information in your head, even if it is
21 going to be subconscious, that could play a devilish role in
22 terms of your ability to sit fairly as a juror based only on
23 what you hear in the courtroom. So, I think you understand
24 that.

25 So, I use humor to get this point across by telling

Preliminary Remarks of the Court

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1 you the only thing you are allowed to tell the folks back home
2 when they ask you about the case is that Judge Block is a
3 handsome guy, he's 6 feet 4, he's much better looking than
4 Brad Pitt, he's only 34 years old, what a judge we have, okay.
5 Otherwise they'll understand that they have a responsibility
6 as fellow citizens not to try to get into your head.

7 The internet is a dangerous thing because people
8 love to look at the internet, our curiosity, what's this,
9 what's that, okay. You've got to avoid that. If you see
10 anything in the paper -- I don't think this is a newspaper
11 case, it's not like the Peter Gotti trial I presided over
12 years ago when it was in the paper every day, but if something
13 comes into the newspaper, because it is a human interest case,
14 try not to read it, try not to do that. If you see anything,
15 tell Mr. Innelli about it because we can, if necessary, go
16 with seven jurors or even six. So, if somebody gets sick, we
17 hope that doesn't happen, then we can go with seven or if
18 something happens where one juror is prejudiced, then we'll
19 have to go with that many jurors. So, you have to really take
20 your responsibility seriously in discharging your obligations
21 fairly and faithfully.

22 So, I've talked a lot and it's about 3:00 now, I
23 think I've covered most of what's going to happen. We are
24 going to hear all arguments today, then the first witness will
25 come tomorrow and when the lawyer questions that witness, we

Preliminary Remarks of the Court

23

1 call that direct examination. Then after that witness
2 testifies, the other side can question the witness, we call
3 that cross-examination. There can be redirect, recross and
4 eventually the testimony of that witness will be completed.
5 Then we go on to the next witness. The plaintiff presents all
6 of its evidence first and the defendant goes after that and
7 after that I'll come down and talk to you. The lawyers will
8 give their concluding remarks first before that happens in all
9 probability and they'll tell you why you should find in their
10 favor and then I'll explain the law to you and you will be off
11 with your deliberations.

12 I may interrupt from time to time by asking some
13 questions of a witness. If I do that, it's not because I have
14 an opinion about the case. Don't think that anything I do or
15 say or whatever is to give you a clue as to what I think of
16 that witness or about the case because that's not what I try
17 to do, but if I feel that the witness is answering a question
18 and it's confusing to me, since you can't ask questions, I
19 would love to have you ask questions but the higher ups say
20 you can't, right, then I'm going to be your surrogate and I'd
21 say if I'm confused, they may be confused and I'll try to ask
22 a question to clarify things. If the witness is rambling, I
23 may try to get the witness focused. If they're going too long
24 and I think it is confusing, I'll try to bud in at that
25 particular time to move the trial along in an expeditious

Preliminary Remarks of the Court

24

1 proper way and you'll see some of that happening but if that
2 happens, don't think that I'm telling you how the case should
3 be decided, okay.

4 Now, I may have forgotten some things. I think I've
5 got it down pretty well to my satisfaction. If I want to say
6 anything else to you, I'm not bashful.

7 One other thing though, we're going to take a
8 mid-morning break and mid-afternoon break. We're starting
9 today a little bit later so we'll see whether we need a break
10 today but if anybody needs to use the facilities, anybody in
11 the courtroom including the judge, including the court
12 reporter, including Mr. Innelli, my clerk, just don't be
13 bashful and we can take a little break because I want everyone
14 to be comfortable here, all right. And I think when we go for
15 an hour and a half and take a break, usually that works okay.
16 I may take a shorter break. We're human, don't be bashful
17 about it. Pretend we're in kindergarten class, raise your
18 hand, teacher, I have to go to the bathroom.

19 I think Mr. Shearer is going to make the opening
20 statement.

21 Before we do that, Mr. Innelli always reminds me, we
22 have to give you another oath. You may recall you took an
23 oath, everybody was out there, and that was to guide your
24 answers in terms of what we call the voir dire process, the
25 selection of the jury, can you answer these questions

Opening - Shearer

25

1 truthfully and honestly, etc.

2 Now that you've been selected as jurors, we give you
3 a different oath and it goes by like a bullet but it is so
4 important we start the trial that way, we end it that way.
5 Listen to it carefully. Mr. Innelli at this time will
6 administer it.

7 THE COURTROOM DEPUTY: Good afternoon. If you could
8 all please stand and raise your right hands.

9 (Jury sworn by the courtroom deputy.)

10 THE COURT: Can you hear it all?

11 Mike, do you want to say it again. It's so
12 important. Slow it, say it again.

13 (Whereupon, the courtroom deputy repeats the oath.)

14 THE COURT: Without fear, without favor. We don't
15 care whether it is a corporation, what color the parties are,
16 whether they blue, purple, whatever, their national origin,
17 anything about that; without fear or favor, just based upon
18 the evidence, a true verdict based upon the evidence which is
19 going to unfold starting tomorrow morning when the plaintiff
20 calls the first witness but first Mr. Shearer is going to give
21 you his opening statements.

22 Go ahead.

23 MR. SHEARER: Thank you, Your Honor.

24 Good afternoon. We're here today because First Data
25 Corporation and the four individual defendants over here,

1 Mr. Bisignano, Mr. Charron, Mr. Marino and Ms. Johnson,
2 violated plaintiff's rights under the Family and Medical Leave
3 Act and the Americans with Disabilities Act.

4 They did this in two ways, they took two actions;
5 first, the plaintiff has recovered from cancer surgery, he had
6 his larynx removed. He was at home working from home remotely
7 using computers, video-conferencing, texting and working on
8 his company business while he was recovering at home.

9 First Data, for reasons that you'll have to decide,
10 came and visited Mr. Barger, saw his condition, decided that
11 he should be on leave of absence and forced him to quit
12 working, to go on unpaid leave of absence against his will.
13 He asked to stay working but they told him for his own health
14 he needed to stop working. That violates the Americans with
15 Disabilities Act. That is making a decision based solely upon
16 the plaintiff's physical condition and illness to take an
17 action against him by making him stop work and go on unpaid
18 leave, stopped his salary and told him to stop working.

19 The second way they violated the law was under the
20 Family and Medical Leave Act. At the end of this forced leave
21 Mr. Barger was required to present to First Data a physician's
22 note that said that he could return to work and that the
23 doctor had okayed his return. Mr. Barger delivered that note
24 and he delivered it timely within the twelve weeks. First
25 Data accepted the doctor's note. Three days later they called

Opening - Shearer

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1 him up and told him that he was fired and that he didn't need
2 to come into work as scheduled the following business day
3 after the weekend. That violated the Family and Medical Leave
4 Act because you're entitled to take twelve weeks with pay and
5 the statute says you're entitled to be restored to your
6 position or an equivalent position at the end of your leave.
7 First Data violated it by not bringing him back after he had
8 satisfied every condition which was to have his doctor certify
9 his right to return and his ability to return at that time.

10 Now, when I first heard Mr. Barger's story I
11 couldn't believe it because First Data is a large corporation,
12 they have 22,000 employees worldwide, they have 6,000
13 independent contractors and they have a management team that
14 is excellent, a very experienced CEO, an Executive Vice
15 President of Human Resources that's been around for decades
16 and it's a well managed company and they've got a special
17 leave management team.

18 Somebody screwed up and ever since then First Data
19 has been making excuses and you're going to hear their excuses
20 and I hope that the presentation of evidence that I will have
21 for you will show you for what they are, they are after the
22 fact, lawyer manufactured excuses for what was otherwise
23 illegal conduct, forcing leave against Mr. Barger's will and
24 failing to reinstate him when he satisfied the condition of
25 providing a doctor's note.

1 Now, the purpose of this opening is to kind of give
2 you not only that background but background as to the facts
3 you're going to hear and what I think I can prove and I'm
4 going to anticipate what I think the defendants are going to
5 say, I've been -- this case has been going on for two and a
6 half years, almost, if you add all of it together, the pre-
7 filing of the suit, almost three years at this point. So,
8 I've heard their arguments so I'm going to anticipate those
9 for you a little bit.

10 Now, this is going to be an interesting trial,
11 you're going to hear from Wall Street CEO-s, you are going to
12 hear from physicians about the surgery that occurred, the
13 recovery, how long it takes. You're going to hear about First
14 Data's business, what they do, how they process payments, the
15 type of technology that they use because Mr. Barger's job at
16 First Data, he was the Senior Vice President of Sales
17 Transformation and Training. He designed the training
18 programs around lots of things, the corporate -- the
19 transformation of First Data from a corporation that merely
20 provided PIN pads and credit card swipes to a merchant and
21 then processed those transactions to a company that's now
22 transforming with new modern technology into the ability to
23 collect information, provide their customers additional
24 information about the market, about the economy, about their
25 specific business. So, they're moving to more of an

1 information type company and Mr. Barger was hired to help.

2 Now, I'll get into the details of all of that but I
3 want to echo what the judge just said about what the lawyers
4 are talking about, what the lawyers say is not evidence. So,
5 remember that. Mr. Eidelman and Mr. DiLorenzo are very
6 experienced attorneys and can tell a good story and just
7 remember what they say is not the evidence. You're going to
8 need to listen to the witnesses, you need to listen to -- look
9 at the documents and make your decision based upon that.

10 I'd like to introduce Mr. Barger right here. Wish
11 him happy birthday, he turned 75 just Saturday. This is my
12 co-counsel, Mr. David Zeitlin, who's from here in Brooklyn and
13 is helping me out with this case.

14 Now, this case is not like most ADA and FMLA cases.
15 In this case in every instance you'll hear, you'll hear
16 Mr. Barger through emails and through testimony saying he
17 wants to work, work is the man's life, he loves it, he's been
18 working since he was 15, 16 years old every single day.
19 Taking the work away from him is what really harmed him.
20 That's what he did, he worked and he wanted to continue
21 working.

22 You will hear that the day after his larynx was
23 removed he was up the next morning checking on his team that
24 was at work, asking them how they were doing, following emails
25 while he was laying in bed 24 hours after surgery. The man

1 wanted to work, and a lot of cases that you'll hear under the
2 FMLA or ADA is people wanting to leave, fighting over whether
3 or not they stayed on leave too long, whether they've taken
4 leave too much but that's not the case here, Mr. Barger didn't
5 want leave and so it's a little bit different in that way from
6 what you may have read about in terms of leave cases.

7 Now, like I said, the plaintiff is making claims
8 under both the ADA, the Americans with Disabilities Act, and
9 the FMLA, the Family and Medical Leave Act. We're not trying
10 to get double count, we're not trying to recover twice. The
11 law requires that when you bring a case, you need to bring all
12 of the claims that you may have that arise out of the same set
13 of facts and out of the same set of circumstances at the same
14 time. So, these all arise out of the same set of facts,
15 they're brought together, we're not double counting, we'll
16 only get the damages that you can get under both statutes, you
17 can get them once, so don't take it like this is a pile on.

18 (Continued on next page.)
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20
21
22
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OPENING STATEMENT - PLAINTIFF

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1 MR. SHEARER: The case is simple, like I said.

2 Two things to remember. They forced him on leave
3 when he didn't want it because he was ill, because of their
4 determination that he was ill. And, second, when he satisfied
5 the criterion, brought his doctor's note back, they wouldn't
6 let him come back to work, and violated the Family Medical
7 Leave Act.

8 Now, Mr. Barger, I want to tell you a little bit
9 about Mr. Barger so you can kind of understand where this work
10 ethic came from.

11 Mr. Barger was born in Boone, Iowa. It is a farming
12 community kind of north of Des Moines, and then he lived in
13 Hammond, Illinois, he lived in LaSalle, Illinois -- Hammond,
14 Indiana, I'm sorry. But he did most of his growing up in
15 Dixon, Illinois. So Mr. Barger is from small Midwestern,
16 small towns, Iowa, Illinois, farm areas. And, you know, from
17 the time he was little, he was mowing, raking leaves, baling
18 hay, doing all the things that kids in the small town Midwest
19 do.

20 He then graduated from Dixon high school and went to
21 Iowa State University for a year, played freshman basketball,
22 but then decided college wasn't really his thing and dropped
23 out to go get a job. Then he decided, well, maybe I should go
24 back to school. And so he ended up at what's now Truman
25 State. It was Northeast Missouri state at the time. And he

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1 graduated with a BS in education.

2 And he got a job coaching basketball and teaching
3 history in another small town in Gilbert, Iowa. So he did
4 not -- you hear this case, we are going to be talking a lot of
5 Wall Street. Mr. Barger is from the Midwest and was a high
6 school teacher and a high school coach. Painted houses in the
7 summer, and every few years he decided that he was making more
8 money painting houses than what he was teaching school, and so
9 he stopped teaching and painted houses full-time.

10 And he moved to another small town in Iowa,
11 Chariton, Iowa. And there he decided to sell some real estate
12 and painted some houses, and he owned a bowling alley.
13 Chariton, Iowa is, I believe, about 4,000 people, and
14 Mr. Barger was elected to the city council. But while he was
15 there, he met a guy that ran a bank, and he became -- he sold
16 off his businesses and started his career with a bank. He did
17 fabulous, and after a few years, the bank moved into their
18 main office in Des Moines, Iowa, and he worked there for quite
19 a while and developed some innovative products.

20 Up until that point banks only could be banks, they
21 couldn't sell securities, they couldn't have insurance, and
22 now you have these mega banks, Citibank, you know, Chase,
23 where they can sell everything.

24 What Mr. Barger developed, as that was changing, he
25 developed the first investor center, he served on the American

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1 Bankers Association advisory board, and he created some new
2 marketing ideas, and he was recruited to Wall Street because
3 of it, and he was hired at Shearson Lehman, and he moved to
4 New York. Had to have been a brave move, from those
5 4,000-people towns to the area. His first office was on the
6 106th floor of Tower 2. That's quite a move from small town
7 Iowa.

8 And he worked, he was a director of sales and
9 training there. He created several new programs for training
10 the employees at Shearson, and worked very closely with the
11 man you will hear from tomorrow, Mr. Joseph Plumeri, who is
12 one of the stars of -- been a star of Wall Street for a long
13 time. And he then left, started consulting, and then he got
14 recruited back by Mr. Plumeri again, and he was senior
15 executive training and business development at Smith Barney.
16 And, again, he just continued developing his training classes,
17 and the training classes focused on the sales force, on how
18 you get people to buy. And it is not marketing, he has some
19 really interesting ideas on how you train.

20 And you will get to hear from him probably near the
21 end of our case, because we have to get some witnesses through
22 that need to travel in, fly in, and so Mr. Barger will
23 probably be near the end. And you will hear from him. And
24 he's great, and his ideas are great. And he's a teacher.

25 Then after he kind of retired again, came back to

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1 Primerica, he was at Citigroup, and he kind of retired again.
2 I wouldn't call it really retirement. He calls it retirement,
3 but he continued working. It more or less means he's not on
4 Wall Street anymore.

5 Then he got recruited. He was working his
6 consulting business, and this is where the story for this case
7 really starts. The end of 2013, the beginning of 2014,
8 Mr. Barger was working his consulting business, and
9 Mr. Plumeri calls him up again, and said, you know, I'm now
10 vice chairman of First Data Corporation. They're doing this
11 transformation from starting to sell technology and
12 information, and your programs that you use for the brokers at
13 the banks on how they have the information advantage and how
14 they use that to sell securities or other financial products,
15 would be a good fit at First Data.

16 Now, I don't know if you know who First Data is.
17 Big company. You probably interacted with First Data every
18 day, or at least once a week and don't even know it. Their
19 business involves almost every aspect of the electronic
20 payments transactions. They have agreements with the banks to
21 print and issue credit cards. They have agreements with your
22 local pizza shop where they will process the credit cards for
23 the pizza shop. They run an ATM network, and they process all
24 of this information and make sure the cash moves from -- your
25 debit transaction moves from your bank to the pizza shop's

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1 bank, and it all runs through their system. They estimate
2 that 40 percent of all electronic payments in the United
3 States pass through their systems at some point during that
4 whole process, whether it is from your bank to their bank or
5 it is between you and the merchant, whether it is the card
6 that's been issued, and they are a part of the American
7 economy. They process 3,000 transactions a second. And some
8 people probably haven't even heard of them, but they are a
9 critical component to how payments work inside the United
10 States and in the world.

11 Like I said, up until the last five to ten years,
12 what they probably did with merchants was give them PIN pads
13 and swipers. That's changing. And Mr. Barger was coming in.

14 Like I said, he spent 30-plus years on Wall Street,
15 and he -- Mr. Plumeri, his friend, for all those 30 years, a
16 man he worked with at all those companies, Shearson,
17 Primerica, Citigroup, recruited him.

18 Mr. Barger began working with First Data in January
19 of 2014 simply as a consultant. He was working when he could,
20 but he came in, started to evaluate the company, whether he
21 thought that his trading programs would work there, whether
22 they could be modified to work in a different industry other
23 than where they had been used before, and he found First Data
24 interesting and thought that his program would work. And so
25 he continued to consult, but in April of 2014, Mr. Plumeri

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1 came to him and said that he wanted him to shut down his
2 consulting with other clients. He was consulting with other
3 banks, he was consulting with other brokerage houses, and
4 Mr. Plumeri wanted him to only work for First Data. So he
5 gave him extra money a month and said come to First Data as an
6 employee, and that's what he did. Mr. Barger began as an
7 employee of First Data on June 30, 2014.

8 Now, the first few years he reported to Mr. Plumeri.
9 Mr. Plumeri then decided to just be a member of the board and
10 not be involved in the day-to-day operations of First Data
11 anymore. And Mr. Barger began reporting to a man named Jeff
12 Hack, who is not here, and I don't believe you are going to
13 see him, but you will be hearing his name a lot. And Mr. Hack
14 was an executive vice president of sales and training at First
15 Data. And Mr. Hack reported to defendant Charron that -- and
16 in what's called the global business solutions group within
17 First Data. And so Mr. Barger became within defendant
18 Charron's group. Defendant Charron reports to defendant CEO
19 Frank Bisignano. And so that structure was there for a while.

20 Now, Mr. Barger continued to work on the sales
21 training programs, he developed programs called the First Data
22 Way, which was a traveling road show that First Data did to
23 their employees, to teach them about the new mentality about
24 the company on how you begin to think, how you become a
25 business consultant for the merchant, tell them what

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1 information First Data could supply them about their
2 competitors, about their market, about their customers, about
3 the economy. And it collects some data. It collected from
4 public sources, from transactions, it puts together a package
5 and First Data sells it. Mr. Barger was trying to teach the
6 company that we are different now, we are selling information,
7 not just PIN pads.

8 In February 2016, Mr. Barger was diagnosed with
9 spindle cell carcinoma of the larynx, in other words, throat
10 cancer. From March until May of 2016, Mr. Barger underwent 30
11 radiation treatments, and that's a lot, inside of two months,
12 from the end of March to May, the beginning of May.

13 But the whole time, he did not miss work. He went
14 into work every single week, every single day. He was in
15 work, he had his radiation treatments over lunch, he would
16 have his -- whenever he had them, he would be back in the
17 office right afterwards, and he was there every day. He never
18 called in sick, didn't take vacation, didn't take leave, just
19 continued to keep working, traveling, and continued speaking
20 on behalf of First Data at these gatherings.

21 In August of 2016, he went back into the doctor and
22 got the bad news that the radiation hadn't worked and that
23 they were going to have to do total laryngectomy, remove his
24 voice box. He went and got a second opinion, and they
25 concurred. And on September 6, Mr. Barger traveled to Tampa,

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1 Florida, where one of the very great otolaryngologists and
2 throat cancer doctors works, and who was recommended to him by
3 CEO Bisignano, he was a friend of Mr. Bisignano, and suggested
4 that Mr. Barger go see him. So Mr. Barger had his larynx
5 removed in Tampa, Florida, September 6, 2016.

6 Like I said, the next morning he was up working
7 again on the e-mails, on the text messages. Couldn't speak,
8 but the time we're on there, they figured out ways to have
9 video conferencing where he could text his questions onto the
10 screen so that the team he was working with was able to see
11 what his thoughts were and he could submit questions to his
12 team. He had e-mail, he could text people in the meetings, so
13 he could continue to communicate while his throat was healing
14 and he was unable to speak.

15 He had some complications, and you will hear about
16 that, and ended up staying in the hospital for three weeks
17 longer than what he suspected, but like I said, he was
18 continuing to work the whole time.

19 Middle of October, so about six weeks after his
20 surgery, he went back home, and his home was in Atlanta. So
21 he went back home to Atlanta, and he stayed there. He was
22 back on his home computer in his home office, had -- First
23 Data was right down -- their office in Atlanta was right down
24 the road. It came and set up all the electronics he needed,
25 video conferencing, gave him his laptop so he would be more

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1 efficient, and set up an Adobe meeting system. And I will
2 have somebody explain that to you about how -- it was real
3 time. They had -- you know, they're in a meeting room, in an
4 office somewhere they had cameras up, and Mr. Barger could see
5 them, Mr. Barger could communicate with them, he could type.
6 But his throat was still healing. Couldn't speak yet, and he
7 can now, it's great. He's getting -- it is amazing technology
8 that they now have. It is not this little electronic thing
9 that's on your throat. It is actually a device that connects
10 your trachea to your esophagus and then pushes on this button,
11 the air comes up, out -- no, it comes up out of our mouths,
12 that doesn't work anymore. His air comes up and comes out
13 this hole. When he pushes that button, it forces the air to
14 go into his esophagus and vibrates the back of his mouth. And
15 so it pushes the button and vibrates the back of his mouth,
16 and he can speak, just like when we talk, the air comes up and
17 out, but instead it comes and vibrates our vocal cords, and
18 now it is just vibrating the back of his throat.

19 So on November 3 -- so he came home mid October. On
20 November 3 of 2016, Mr. Plumeri and defendant Marino flew from
21 New York and -- New York on private jet down to Atlanta to see
22 Mr. Barger. Mr. Barger was not in good shape. There was
23 still some complications, not only with the healing, but, you
24 know, there was drainage issues that gave him pneumonia for a
25 night --

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1 THE COURT: Sorry.

2 (WHEREUPON, there was a short interruption.)

3 MR. SHEARER: So Mr. Marino and Mr. Plumeri came
4 November 3. And Mr. Barger was still raw, recovering, had
5 just come out of the hospital for an overnight stay because of
6 pneumonia, and Mr. Marino observed him. He was there for
7 about two hours, and then he left.

8 Well, about two weeks later, Mr. Marino, who's good
9 friends with Mr. Barger, they worked together a lot, they
10 traveled together, sent Mr. Barger a text message, that
11 November 19th. It was a Saturday. Sent him a text message
12 and told him that First Data was requiring him to take leave
13 and apply for short-term disability because Mr. Barger had
14 been being paid on regular payroll all the way through, from
15 the day of surgery through November 19.

16 Short-term disability is 66 and two-thirds, so
17 two-thirds of salary, you get that for 90 days. Then you
18 would move on to long-term disability, which is 50 percent of
19 your pay. The distinction between short-term disability and
20 long-term disability is going to be important. The parties
21 have agreed that the way that the short-term disability works
22 is First Data pays for the short -- makes short-term
23 disability payments, and it comes out of First Data's bank
24 accounts, the 66 and two-thirds percent of his salary. If you
25 get to long-term disability, they bought an insurance policy

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1 through MetLife, and once you hit long-term disability, First
2 Data doesn't make those 50 percent payments, MetLife does as
3 part of the insurance policy. It is an insured product. So
4 when he's on short-term disability, it is First Data's
5 expense, when he's on long-term disability, First Data's
6 expense is zero.

7 So Mr. Barger responds to Mr. Marino's text, and he
8 says, "What? I'm fired? You are removing me from my job?"
9 And Mr. Marino texts back, "No, no, not fired, just like
10 anybody on short-term disability or leave, your salary will be
11 restored when you are well, and you need to take time to get
12 well and focus on your health."

13 And that's where the ADA problem is. Mr. Marino saw
14 him on November 3, evaluated the medical condition, and told
15 him that he had to go on leave without -- against Mr. Barger's
16 wishes. And that would be short-term disability for 90 days,
17 and then long-term disability simply because that's a benefit.
18 Under the FMLA, it can be unpaid leave completely.

19 So Mr. Barger continued -- well, one other thing.
20 When they forced him onto leave, they also cut his access to
21 the First Data systems. I mean, he could no longer get
22 e-mail, he could no longer do his video conferences. He could
23 not access the First Data. They had a web site for employees
24 where they can get forms and get information about their HR
25 benefits. He could no longer access any of that. He couldn't

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1 use a cell phone to e-mail from his First Data e-mail address.
2 So he basically was forced to completely cut communication
3 with First Data.

4 Now, that's the other violation of the ADA. Up
5 until that point, a company has an obligation to provide a
6 reasonable accomodation to someone who has disability, if they
7 can perform the essential functions of their job, which is
8 exactly what there was. First Data had given him all the
9 technology to perform his job from his home while he was in
10 recovery, and then First Data, on their own, took it away from
11 him and told him, "We are not paying you on payroll anymore,
12 and you can't work on work anymore."

13 Mr. Barger then received -- took all the way until
14 December 15. So November 19, he was told he was going to
15 leave. There was a mess involving how the forms got sent.
16 But Mr. Barger filled out his forms on the 21st and gave them
17 to the HR department, but it took until December 15 for him
18 finally to get a letter that declared his leave to be from
19 October 24 to January 16, '17. So 10-24 of 16 to 1-16 of 17.

20 Now, I could have an argument about the start date
21 because he wasn't -- how his leave could have started before
22 he even got the forms, I am not quite sure, but for purposes
23 of this case it doesn't really matter because on -- because he
24 delivered his physicians note before his leave expired. But
25 he was told when he -- even though they declared his leave,

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1 October 24, January 16, he was told he couldn't come back
2 until he had a physician's letter. And if he didn't get the
3 physician's letter, when leave expired, at that point he was
4 no longer on protected leave and his job could be filled, he
5 could be terminated, so he needed to get back by that date or
6 ask for additional leave, but not under the FMLA.

7 Just a few weeks after he got that, at the end of
8 December, he went into the office for the holiday party. On
9 December 22, he went into the office, you know, Merry
10 Christmas, happy holidays to his team, and at that point he
11 told members of First Data's management his plan was to return
12 in January. That was the first time he told them he was
13 coming back.

14 On December 28, he told Jeff Hack that he was coming
15 back on January 16. Jeff Hack then told Mr. Marino that
16 Mr. Barger was coming back on January 16. He then on January
17 5, he informed lead management that he was coming back on
18 January 16, and he told them that he would get his doctor's
19 note on January 10.

20 Now, remember, he was forced on leave November 19,
21 and here we are just January, six weeks later, and he's
22 already coming back.

23 So Mr. Barger did exactly as he said. Went to his
24 doctor on January 10. Doctor says, you're good to go. He
25 immediately drove from the doctors to the First Data office,

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1 and handed his return to work authorization, signed by his
2 doctor to defendant Johnson, and they scheduled him to come
3 back a week later.

4 A week sounds like a lot, but it's really not.
5 January 10 was a Tuesday. And January 17 then is a Tuesday,
6 but the 16th was Martin Luther King holiday. So it was really
7 only three business days for him to get ready to come back,
8 for the company to get ready for him to come back.

9 Then he got told on January 13. So the business day
10 before he was supposed to go back to work, 6:00 p.m.,
11 Mr. Johnson called him up and told him that he was terminated
12 and that there was no need for him to come into the office the
13 following day, following business day.

14 That violates the FMLA. It says you need to restore
15 someone to their position or to an equivalent position. You
16 are going to hear some stories of a company-wide
17 restructuring, you're going to hear some stories about how we
18 should recount dates. You are going to hear some stories
19 about how Mr. Barger may have not -- may have tricked his
20 friend of 30 years. That's all lawyer speak. That's not what
21 happened. What happened was Mr. Barger turned in his note on
22 January 10, said his return to work date, and was fired and
23 wasn't restored.

24 Now, I also think I'm going to be able to prove to
25 you that Mr. Barger was fired only because he decided to come

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1 back. Because when he's on long-term disability, he's zero
2 cost to First data. That's being paid by the insurance
3 company. But when he decides to come back to work, First Data
4 has to start paying his salary again. And First Data would
5 have been just fine letting him continue on long-term
6 disability for as long as he could, and they would just go on
7 their merry way, taking his responsibilities, giving them to
8 someone else, hiring someone else, restructuring it. And
9 that's what they thought he was going to do. They thought he
10 was going to go out to pasture. And, instead, consistent with
11 what everyone will testify to, he decided he wanted to go back
12 to work. And it was him wanting to go back to work, I think
13 the evidence will show, for economic reasons, that First Data
14 terminated him because they didn't want to take his salary
15 back.

16 Well, that's exactly what the FMLA was designed for.
17 Before the FMLA, there were no protections for leave. If you
18 were ill in such a situation, you had to rely upon the
19 kindness of your employer to keep your job, not fire you for
20 being absent. Once you were down on sick days and you were
21 out of vacation days, that was it. You didn't have any job
22 protection at all. And the argument made by the employers on
23 why they didn't want the FMLA was we can't -- we have a
24 business to run here. We can't have employees out. And so
25 there were negotiations for eight years in Congress, trying to

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1 figure out how to balance what the employers need and that the
2 employees need to have a protected job. You need cancer
3 surgery. And the balance is, what was struck, was 12 weeks of
4 unpaid leave. But on the other side of it, there's unpaid,
5 but the employee's job was protected.

6 So you could leave, not get paid, but your job is
7 still there. The First Data forgot the second part. We got
8 the leave, Mr. Barger got the leave, he got forced on
9 short-term disability, he got long-term disability, but the
10 second half that comes with that wasn't there.

11 The Americans With Disabilities Act, I have alluded
12 to that, it was -- that statute was adopted back in 1991,
13 based on the idea that physical disabilities don't diminish a
14 person's right to participate in society and that because
15 society had historically shunned or segregated disabled
16 individuals, that a law was needed to remedy that situation to
17 make companies be careful in the way that they're thinking.
18 Make sure they don't discriminate against the disabled in
19 their hiring decision and in their pay decision and in their
20 termination decisions.

21 Both -- all the defendants and the plaintiffs, that
22 we all agree, that cancer is a disability under the terms of
23 the Americans With Disabilities Act. In addition, once
24 Mr. Barger's voice box was removed and he's using a prosthetic
25 device to speak, that change in his speaking is also a

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1 disability for purposes of the ADA, and there's no dispute
2 about that between the parties.

3 The ADA prohibits First Data from discriminating
4 against the plaintiff on the basis of his disability in
5 regards to his discharge or any other terms and conditions of
6 employment, and First Data violates that provision, and I
7 think it is not necessarily going to be obvious, they forced
8 Mr. Barger onto leave because they told him that he needed to
9 work on his health. And what his health problem -- was the
10 cancer and recovery from the removal of his voice box, both of
11 which are disabilities. So the decision to put him onto leave
12 was solely motivated by First Data's observation of his health
13 condition, and in telling him to go on leave and take of
14 himself.

15 It may sound like a noble act for First Data to be
16 concerned about Mr. Barger's health and Mr. Barger's
17 condition. But Mr. Barger didn't want that. He wanted to
18 continue to work. And you can't force someone who's disabled
19 to take an accommodation if they don't want it. And, in fact,
20 that becomes a violation of the ADA itself. You can't tell
21 someone you are so disabled, let me give you this aid for your
22 job. If you say no, I can't force you to, but if you can't
23 perform, then I can discipline you however's necessary.
24 Failure to do your job, write you up at work, terminate you if
25 you can't do your job.

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1 But Mr. Barger wasn't given that chance to continue
2 working. He was only given forced leave, which really, as it
3 turns out, really wasn't forced leave, it was really a
4 termination. I mean, he -- yes, he was on leave for 12 weeks,
5 but as soon as he came back, he was fine. And there's also
6 the failure to accommodate claim, which I've talked to you
7 about, revoking Mr. Barger's remote access.

8 So overall -- the excuses. I guess I want to cover
9 these excuses you are going to hear real quick.

10 These guys are creative. They are going to take
11 some tidbits of facts, e-mails here and there, and then
12 they'll weave a story. One of them I call the time travel
13 excuse, and they're going to try to explain to you that you
14 should not look at really what happened, but you should go
15 back and change the date as to when leave started, even -- and
16 they want leave to have started on the date of surgery, but
17 Mr. Barger was working that whole time. And they wanted to
18 end the week after he filled out his forms asking for leave.

19 Now how will they do that? We will see if you
20 believe the facts. I don't see how the facts work that way.

21 There's the restructuring job elimination defense,
22 and they are going to insist that the plaintiff's job was
23 eliminated as part of a company-wide restructuring involving
24 the termination of three to four hundred people.

25 The evidence will show that this excuse is a

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1 subterfuge, a smoke screen, just an excuse for them to -- for
2 First Data not to have to comply with laws like the ADA or the
3 FMLA.

4 Here's why. First Data has terminated large groups
5 of people every single quarter for 18 to 20 straight quarters.
6 Now, then the way that they account for that is interesting.
7 I hope to try to explain it to you. What they end up doing is
8 what would have been your bonus expense for that year, they
9 take it and they call it a severance expense or a
10 restructuring charge. And then for purposes of calculating
11 their net adjusted income and their earnings before interest,
12 taxes, appreciation, amortization, they exclude that. So all
13 the sudden they are net adjusted earnings go up, even though
14 they have paid severance, simply because they call it
15 severance instead of what would have been your bonus. And so
16 those concepts, those financial numbers then become part of
17 the formula for determining the amount of bonuses for the rest
18 of the management that remains employed at the company.

19 So it becomes a cycle where they terminate large
20 groups of people every quarter, and -- but the interesting
21 part is, their head count is up. Their compensation expense
22 is up. Yet they have terminated large groups of people every
23 single quarter.

24 So even if Mr. Barger was in this reduction of
25 force, and I intend to prove he wasn't, but if he was, their

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1 excuse doesn't make any sense. It is not an elimination of
2 his job. His job, and they will admit, the job -- his job
3 duties were moved to somebody else while he was gone. His --
4 on the same day he was hired, Dan Charron, whose group he was
5 in, hired a senior vice president on the exact same day that
6 they terminated Mr. Barger. This is not a reduction in head
7 count. And they cannot show you that these reductions in head
8 count have done anything economically because they continue to
9 hire after they fire all these people. And it is all for
10 accounting manipulation and accounting engineering. It is not
11 for any real -- for a real purpose, it is just so they can
12 change their financial statements when they talk to Wall
13 Street about their stock, when they talk to their debt holders
14 that they owe money to, to say that they are doing something,
15 but in reality, it is just -- it is like a Ferris wheel. Some
16 employees get off, some employees get on.

17 And their head count continues to increase, but they
18 are going to try to tell you, these are legitimate
19 terminations as part of a reduction in force, and they are
20 not. And I will be able to prove that they are not.

21 Remember, and I'll conclude here, the events of only
22 55 days are at issue. And so trying to keep track of the days
23 is going to be important, and I hope at the end to be able to
24 have a calendar to show when all of these events happened.
25 But it is from November 19, when Mr. Barger was forced on

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1 leave, to January 13, when he was notified of his termination.
2 And a lot of things happened in there, but the whole time
3 Mr. Barger was on leave, and wasn't -- didn't have access.

4 So I am going to have to prove what happened during
5 that time period, using the e-mails that they have produced
6 during discovery, and using their witnesses that were there,
7 to try to get them to tell you what happened. Remember, their
8 incentive, especially the defendants, is to tell their story,
9 and I will point that out while they are being examined.

10 Well, the trial -- in thinking about this, I am
11 going to try to organize things into sort of five time frames.
12 There's the -- the first time frame is before Mr. Barger was
13 hired, so his relationship with Joe Plumeri, who hired him at
14 First Data. We are going to talk about that. Then we are
15 going to talk about the time between his hiring and his
16 surgery, which are the programs and training programs and what
17 Mr. Barger did when he was working at his job full-time in the
18 office before his diagnosis.

19 Then from the surgery to the time of forced leave,
20 how Mr. Barger was working in the hospital and was working at
21 home. And then from the time of forced leave to the time he
22 turns in his doctor's note and is terminated. And then,
23 finally, there's going to be some relevant evidence related to
24 the period of time from the time he was terminated until we
25 are here today.

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1 So you're about to watch a major company, a very big
2 company, try to cover for what is a mistake. They should have
3 brought him back. They should have brought him back. Had
4 they brought him back to a position or even equivalent
5 position, they always forget that one, even if his job was
6 given to someone else, that doesn't mean that they couldn't
7 have provided him an equivalent position.

8 They are going to ask you to ignore time and
9 recreate events, and they are going to attack Mr. Barger's
10 credibility and mischaracterize his job.

11 What they are trying to tell you is, because we fire
12 lots of people every quarter, we don't have to comply with the
13 FMLA. If that person is one of them, we don't have to comply
14 with anybody in this group that's being fired. This quarter,
15 your FMLA rights don't matter. That's what they are going to
16 try to tell you. They will tell you that officers with
17 multiple decades, like Mr. Plumeri or Mr. Bisignano, somehow
18 were tricked or made a mistake in their hiring of Mr. Barger.
19 And the evidence will show that that simply cannot be true.

20 And the evidence will be contrary on both the time
21 counting, on the trickery of Wall Street executives, and onto
22 this restructuring, and it is all designed to force you to
23 take into account and ignore that they forced him on leave in
24 violation of the ADA, that they didn't reinstate him when he
25 brought back his doctor's note. Those are the only two things

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1 you need to remember, and I look forward to presenting this
2 evidence to you, and I am confident you will agree with me and
3 the plaintiff that Mr. Barger deserves justice, and I am going
4 to place this decision in your hands in a few days, and I hope
5 you see it the way I do, which is you can't force somebody on
6 to leave because they are disabled, and when they do come back
7 from leave and they give you a doctor's note, you've got to
8 give them their job back.

9 Thank you.

10 THE COURT: Thank you, Mr. Shearer.

11 Mr. Eidelman.

12 MR. EIDELMAN: Thank you, Your Honor.

13 OPENING STATEMENT ON BEHALF OF DEFENDANTS

14 MR. EIDELMAN: Good afternoon, Ladies and Gentlemen.

15 Your Honor, thank you.

16 362. 362 is the total number of employees who had
17 their jobs eliminated as part of a restructuring, a reduction
18 in force, that occurred in late 2016 and 2017, that included
19 the plaintiff, Mr. Barger. And Mr. Barger was included
20 because at that time he was the 54th highest paid employee in
21 the company, earning -- out of 22,000 employees. And the
22 company determined that it did not need somebody earning close
23 to \$70,000 running a sales training group. That's the
24 evidence -- close to \$700,000. That's the evidence, ladies
25 and gentlemen. And we are going to talk about the evidence.

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1 Before I begin, I just want to say one thing. I did
2 not interrupt Mr. Shearer when he tried to give you a lesson
3 and instruct you on what the law is regarding the FMLA and the
4 Americans With Disabilities Act, the ADA.

5 You heard Judge Block tell you at the beginning that
6 it is the judge's responsibility to tell you what the law is,
7 and the lawyers are here to argue or to present evidence, and
8 opening statement is where I am going to present evidence to
9 you. I am not going to argue the case right now.

10 But because Mr. Shearer did tell you what the law
11 was under the FMLA, he left one piece out, and the piece that
12 he left out is that there's an exception to bringing somebody
13 back at the end of FMLA leave, and it is called in the
14 regulation limitations, the right to restoration. And the
15 limitation that is issued in this case -- that is at issue in
16 this case is that you would otherwise have been laid off,
17 regardless of whether or not you were at work or not, it is
18 not a violation of the ADA to include somebody in a
19 restructure in force. And that's what happened in this
20 particular case.

21 Mr. Barger would have been included in this
22 reduction in force regardless if he was at leave or regardless
23 if he was at work, and that's why he was included, along with
24 362 other people who were let go. And they were let go
25 because at that point in time, management decided that there

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1 was -- that management had become top heavy. And you are
2 going to hear something called the reduction in force of ten
3 percent of the top 3,000 highest compensated employees of
4 First Data. They were the managers of First Data, and
5 Mr. Barger was one of them.

6 Mr. Barger was hired in 2014 first as a consultant,
7 and then as an employee by Joseph Plumeri. Mr. Barger and Joe
8 Plumeri go back many, many years. 30 years together. They
9 were friends. Mr. Plumeri went from company to company, and
10 he brought Mr. Barger with him along the way. And,
11 ultimately, they get to First Data. And you've heard a little
12 bit about what First Data does today, and you are going to
13 hear a lot more about it during the trial. But what it does
14 is exactly that, from that standpoint, which is, you go to the
15 credit card, you go to the cash register, you pull out your
16 credit or your debit card. You ever wonder how that
17 transaction is completed so quickly? Well, that's what First
18 Data's business was, where you swipe your card, and the
19 machine talks to your bank, and the bank talks to the
20 merchant. That's what the business is, and you are going to
21 hear a lot more about that.

22 This case is a little bit different than a lot of
23 employment cases that are presented. You're not going to hear
24 witness after witness come up and testify in this particular
25 case that we had -- that we were looking for cause to

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1 terminate Mr. Barger. That's not what this case is about.

2 This case is about whether or not it was justifiable to

3 include him with 361 other people in this reduction in force.

4 Mr. Barger decided when his employment was

5 terminated to sue First Data, and he also decided to sue four

6 individuals that had been identified. If you will just

7 indulge me for a moment, I want to go back to counsel table so

8 that I can introduce them to you, if I may.

9 This is Frank Bisignano. Frank Bisignano was the

10 CEO of First Data. And it was Mr. Bisignano who made the

11 decision in 2016 or 2017 that the company had become too top

12 pay with management, so they needed to look at eliminating,

13 and you will hear these terms, spans and layers of management,

14 to bring the managers closer to the workers, and also to give

15 the managers more increased responsibility.

16 Mr. Barger himself had throat cancer, and it was

17 Mr. Bisignano, along with Joe Plumeri, who referred Mr. Barger

18 to Dr. Lou Harrison, as soon as they found out that Mr. Barger

19 had been unfortunately diagnosed with throat cancer. And

20 Frank joined the company in 2013 to help turn that company

21 around.

22 This is Dan Charron. Dan Charron joined the company

23 sometime in 2015 to lead GBS, global business solutions, the

24 largest division in the company. And it was Dan Charron, who

25 in the fall of 2015 talked to Mr. Barger about the fact that

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1 the company could not have somebody earning \$700,000 a year
2 running a sales training group, that he needed to get with his
3 manager Jeff Hack to come up with a plan to increase the scope
4 of Mr. Barger's responsibilities. That happened in 2015,
5 prior to the time that Mr. Barger had been diagnosed with
6 throat cancer. And you heard testimony that Mr. Charron never
7 got that plan.

8 This is Tony Marino. Tony Marino was an executive
9 vice president of human resources. He's also a defendant
10 here. Tony Marino and Steve Barger were very close friends.
11 They traveled a great deal together. They worked together
12 closely. And it was Mr. Marino who did everything he could,
13 financially and otherwise, to support Mr. Barger when he first
14 became sick, and then when he had to go out for additional
15 surgery. And he did this for the person that he called
16 "coach." That's Mr. Marino.

17 This is Rhonda Johnson. Rhonda Johnson was
18 Mr. Barger's HR business partner when he was at First Data.
19 She also helped him manage the sales training group over those
20 years. It was Ms. Johnson who when Mr. Barger needed to fill
21 out forms for FMLA and short-term disability and long-term
22 disability so that payment plans could continue once he
23 stopped being paid, at some time in the future or whenever it
24 may be, it was Ms. Johnson who did that. Mr. Barber describes
25 Ms. Johnson as indispensable and someone who he cares very

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1 much about.

2 These four individual defendants seem to suggest
3 that the adage comes true, that no good deed goes unpunished.
4 And what's happened here, in addition to suing First Data, his
5 employer, Mr. Barger has sued Frank Bisignano individually.
6 He has sued Dan Charron individually. He has sued Tony Marino
7 individually. And he has sued Rhonda Johnson individually.

8 Now, you have heard what Mr. Barger's claims are in
9 this case. Well, let me tell you what his claims are not.
10 Mr. Barger testified at his deposition that he was not -- that
11 he does not believe that he was terminated because he has
12 cancer. Mr. Barger testified at his deposition that he does
13 not believe that he was terminated because he took leave.
14 Mr. Barger testified at his deposition that he did believe
15 that the reason why Tony Marino insisted that he go out on
16 leave in November of 2016 was to take care of himself, not
17 worry about work, so that he could get better.

18 You are going to hear the First Data witnesses
19 testify that the hardest thing that they do, and they have
20 done in the past, is to let people know that they've been
21 terminated or separated from employment. It is a very
22 difficult thing for them to do. But First Data doesn't just
23 throw people out on the street. First Data offers employees
24 generous packages to ease their transition into the next
25 phase, whatever it may be. Mr. Barger chose not to accept

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1 his, and he decided to sue.

2 We are going to talk a lot about what happened in
3 2016 and 2017, but I think it is very important that we first
4 go back to 2013. It's a critical time period, and I will tell
5 you why.

6 In 2013, early 2013, Mr. Bisignano, Frank Bisignano,
7 gets a telephone call from KKR. KKR is a company that happens
8 to own First Data. It was a private company at that point in
9 time.

10 Mr. Bisignano, Frank, is asked whether or not he
11 wants to consider becoming the CEO, the chief executive
12 officer, of First Data. You see, in the seven years prior to
13 that, First Data had five CEOs come and go. Why? The company
14 was on the verge of bankruptcy. The company -- this number,
15 it's a big number, it is hard to understand. The company had
16 \$24 billion in debt that had been taken over years and years
17 and years. The company had \$2 billion in interest that it had
18 to pay every year. So it had no money to invest in anything
19 because any money that came in went to pay for that interest.
20 This happened long before any of those individuals worked at
21 First Data, including Mr. Barger.

22 The company was in shambles, and it was in trouble,
23 and they were calling Frank to see if he was interested in
24 coming to help save up to 24 or 25,000 people's jobs because
25 that's the other thing First Data had. First Data was

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1 employing close to 25,000 people whose livelihoods depended on
2 First Data. But this company was either going to get rescued
3 or it was going to go out of business, and ten of thousands of
4 people would lose their job.

5 It was a tough time, but, you know, First Data had
6 something else. It had the name. It had been in the payments
7 industry and, therefore, it knew what it was doing so it had a
8 good reputation, from that perspective.

9 So Frank decides, he speaks to his wife. They talk
10 about he knows it is going to be a challenge. He's had
11 experience doing these kinds of things, so he decides to take
12 on the job. He arrives. He knows he can't do it alone, so he
13 brings in a team with him. He starts to hire people to come
14 on board and help him turn around the company, and he does
15 that. He hires people like Dan Charron, who I have introduced
16 you to, who has had a lot of experience in the payments
17 industry. He also brings on Tony Marino, and he brings on
18 Tony Marino's support. Tony has worked at big companies, but,
19 more importantly, he's also worked at big companies that have
20 been in trouble and what needed to be done to help turn it
21 around.

22 The team starts to get to work. They work 24/7.
23 They leave no stone unturned. They are looking at everybody's
24 job, they are look at technology, they are looking at what can
25 we do to turn this around. They convince KKR, the owner of

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1 First Data, not to sell off pieces of the company. Because
2 this would have been disastrous. People would have lost their
3 jobs, and they didn't want to do that. They wanted to try and
4 make a go of it.

5 In 2013, when Mr. Bisignano, when Frank joins the
6 company, he also brings on board Joe Plumeri, whose name you
7 have heard today already. Joe was brought on as a senior
8 advisor, and he had many duties and responsibilities, one of
9 which was to help turn around the sales culture at First Data.

10 (Continued on the next page.)

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1 (In open court.)

2 MR. EIDELMAN: (Cont'g.) Mr. Plumeri happens to
3 reconnect with Mr. Barger after 13 years. They had been
4 friends and worked together for 30 years. They had
5 disconnected for 13 years. They got reconnected, and Joe
6 said, you know what, we really need help. It's a desperate
7 time. We really need to turn this around.

8 He turned to his friend Steve Barger, and he said, I
9 want you to come join me; and that's what happened. And the
10 two of them started to go out on what are called road shows.
11 They started to go out, train salespeople how they wanted to
12 do these new things; and that went on for a while. That's
13 what they were doing. That's what Mr. Barger was really good.
14 First Data admits that he was really good at this motivational
15 sales transformation type of thing.

16 That was in the beginning of 2014, and then in
17 August of 2014 Mr. Barger is asked by Joe Plumeri to take on
18 the role of managing the sales training group. The sales
19 training group at that point in time was probably around 50
20 employees or so, and they were the ones who designed the
21 training that then -- that the salespeople would ultimately
22 use.

23 Mr. Barger himself was not in sales. He didn't
24 sell. That's not what he went to do.

25 So then we fast forward a little bit, to the fall of

1 2015. A lot of things happen in the fall of 2015.
2 Mr. Plumeri stops being involved on a day-to-day basis. He
3 has now done this for a few years or so. He can't -- he's got
4 other things to do. So he steps out and he stops being
5 Mr. Barger's supervisor. That becomes Jeff Hack. You have
6 heard that already from Mr. Shearer; and ultimately Mr. Hack
7 and Dan Charron worked together in GBS.

8 At this point in time Rhonda Johnson also comes into
9 the picture. Rhonda Johnson becomes this HR business partner,
10 and during the course of that she is helping him do everything
11 that she can. So she is working in sales training.

12 I mentioned already that Mr. Charron in the fall of
13 2015 has a conversation with Mr. Barger about his compensation
14 and says we can't have somebody -- you are the highest-paid
15 senior vice president in GBS at this time who doesn't have any
16 revenue responsibilities. Accountants might call what sales
17 training was as overhead of some sort, and you are making
18 close to \$700,000. You need to come up with a plan with Jeff
19 Hack. Tell me what you are going to do to try and justify
20 this money. Never heard from Mr. Hack about it and never
21 heard from Mr. Barger about it either.

22 Something else important happened during this time
23 period. Rhonda Johnson started to talk to Mr. Barger about
24 the need to hire his successor, the person who was going to
25 take over his job. Now, Ms. Johnson knew that a year earlier,

1 six months after Mr. Barger got to First Data, he was working
2 on hiring his successor. The company went out and started
3 that process of doing that, but because of budgetary
4 constraints it got put on hold.

5 Remember, I told you this company was in dire
6 financial straits. So that got put on hold.

7 A year later Ms. Johnson raises it with Mr. Barger
8 and discusses it with him. She also discusses it with Dan
9 Charron, and she discuss it is with Jeff Hack.

10 Moving forward with the successor takes a pause
11 when, unfortunately, in February of 2016 Mr. Barger is
12 diagnosed with throat cancer. Mr. Barger tells Joe Plumeri at
13 a meeting in Florida that he has been diagnosed. Mr. Plumeri
14 immediately picks up his telephone and calls Dr. Lou Harrison,
15 whose name you have heard here today. He called Lou Harrison.
16 He said, Lou, Dr. Harrison, there is a colleague of ours here
17 at First Data, somebody I have known for a long time, you need
18 to see him. This is a renowned oncologist, very busy
19 practice. He is seen almost the next day.

20 How does Joe Plumeri know Dr. Lou Harrison? Because
21 he was Frank Bisignano's doctor when Frank had cancer in 2010;
22 and, when it came to the time that Joe's wife had cancer,
23 Frank Bisignano immediately referred Joe to Lou Harrison. At
24 that same meeting, Mr. Bisignano learned from Mr. Barger that
25 he had been diagnosed, unfortunately, with throat cancer. The

1 first thing Mr. Bisignano, Frank, did was to get in touch with
2 Joe and said have we gotten Mr. Barger in, have we gotten
3 Steve in to see Dr. Harrison; and Joe assured him that he did.

4 During the course -- and you heard it -- he
5 underwent radiation, and he continued to first on First
6 Data OA. Now, I thought I heard in the opening that it was
7 Mr. Barger who developed First Data OA. That's not what the
8 evidence is going to show. The evidence is going to show that
9 Mr. Marino, who joined the company in March of 2015, in the
10 fall of 2015 Mr. Marino decided that First Data OA should roll
11 out because they were no longer doing the road shows with Joe
12 Plumeri any more. He was going upstairs.

13 And Mr. Marino put together a program that brought
14 together some senior leaders in the company, and they went out
15 and did a day or a day and a half seminar where they talked
16 about the history of the company, payments in the company.
17 The former CEO spoke for three hours in the morning about it,
18 and then you had other people come in to talk about how you do
19 a deal, how you do this.

20 Mr. Barger's presentation in First Data OA was 45
21 minutes in the afternoon, and he talked about things like
22 sales enterprise selling, the things that Mr. Shearer was
23 telling you about. That's when Mr. Shearer -- excuse me, when
24 Mr. Barger and Tony Marino became good friends, because they
25 started traveling together. But it wasn't Mr. Barger who put

1 together First Data OA; it was Tony Marino.

2 But during the time after he had his radiation and
3 it was difficult for Mr. Barger to speak, the company didn't
4 say you can't do First Data OA anymore, even though it's
5 difficult. He continued to participate in First Data OA,
6 because that was the right thing to do, and that's what
7 happened.

8 But during the time that he is undergoing radiation,
9 there is a pause put on the search for his successor. The
10 company said let's hold off. But after the radiation was
11 done, Rhonda Johnson will testify -- and there is evidence to
12 this -- that she spoke to Mr. Barger again about the need for
13 a successor; that the sales training group was in shambles at
14 the time. There was no leadership; there was no direction.

15 You see, Mr. Barger was the senior vice president up
16 here of sales training, and the workers were down here at
17 director level. There was nobody in between. Ms. Johnson was
18 trying to fill that role, but she is in human resources. She
19 is not in GBS. That's not where she belongs.

20 And she talked to him over the years and counseled
21 him about what he needed to do to improve his leadership and
22 his training and his management of that group; and he agreed
23 that they needed to look for a successor, and the company
24 started to do that. The company started to do that, and
25 ultimately determined at the end of the day that there wasn't

1 a need for a successor, because we will get to the 362 again.

2 Mr. Barger was supposed to go out on surgery and did
3 have surgery at the beginning of 20 -- excuse me, in September
4 of 2016. Right before he went out on surgery, Joe Plumeri
5 asked him and Tony Marino to come play golf. You know what,
6 sometimes they say that a picture speaks a thousand words; and
7 I know this was important to Mr. Barger. There is no question
8 about it.

9 But this is the picture that was taken like three
10 days before they went to play golf. This is Mr. Barger. This
11 is Joe Plumeri, who you are going to meet tomorrow. And this
12 is Tony Marino. Tony Marino, the same defendant that's
13 sitting over there, who has been sued under the FMLA.

14 Mr. Barger goes out on surgery in early September.
15 And you are right, the company does not require him to go out
16 on leave at that time. He says he wants to keep working. He
17 is a senior vice president; and the company says, okay, you
18 can work, and they continue to pay his salary throughout that
19 entire time.

20 In early November, Joe Plumeri and Tony Marino fly
21 down to Atlanta to go visit Mr. Barger. During this time
22 period, Joe Plumeri is texting with Mr. Barger, seeing how he
23 is; and Mr. Barger doesn't want him to come visit. He says he
24 is too ill to see people yet, he is not ready; but, finally,
25 he relents, and in November his friends fly down to see him.

1 They spend time together. It was a good visit. The visit was
2 so good that Mr. Barger describes the time they spent together
3 as priceless.

4 Mr. Plumeri and Mr. Marino are going to testify
5 under oath that the reason for that visit was not to spy on
6 Mr. Barger, not to find out what was, you know, whether or not
7 he could work or not. It was to go visit and cheer up their
8 friend.

9 Now, you have heard something about a story, the
10 stories we are going to tell. We are not telling stories. We
11 are presenting evidence. There is a reason why Mr. Marino and
12 the company told Mr. Barger that he had to go out on a leave,
13 and this got left out. If you listening carefully in the
14 opening, there is a piece that got left out, because about a
15 week and a half after that visit Mr. Barger sends Tony Marino
16 a text message; and you will see those text messages about a
17 week and a half later, and it says, doctor found some more
18 cancer, I need to go in for another operation, I'm going to be
19 in the hospital for six days, and I'm going to have another
20 four weeks of recovery. This is what he texted to Tony
21 Marino. He didn't tell him when they were there. He texted
22 them a week later, a week and a half later.

23 Now, by this point in time Mr. Marino was aware of
24 some strange behaviors that had occurred while Mr. Barger was
25 recovering from leave. He had showed up on a couple of video

1 calls with his team not wearing a shirt. He had sent a couple
2 of e-mails that were incoherent, including to senior managers
3 of the company, that suggested to the company that he was
4 heavily medicated at the time that he was sending these text
5 messages. And now here Mr. Marino gets an e-mail that says, I
6 need more surgery and I'm going to be out another four weeks.

7 So the company decides at that point in time, we
8 need to shut Mr. Barger down, we need to let him concentrate
9 on getting better. Not worrying about things at the company,
10 but getting better. And as I testified -- as I said, not
11 testified -- Mr. Barger testified at his deposition that he
12 believed that the reason why Tony Marino did that, the reason
13 Tony Marino did that and the company did that was because they
14 truly wanted him to get better; and that was the reason.

15 And it's true, his access was turned off, and you
16 heard talk about what the ADA requires one way or another.
17 The reason why the company turned off Mr. Barger's access is
18 because if he wasn't going to be working there is no need for
19 him to have access to the company's systems. So there is no
20 reason for an accommodation.

21 What happens then is Mr. Barger is sent paperwork.
22 This wasn't going to be unpaid leave. Mr. Barger continued to
23 get paid, and you are going to see the paychecks that went all
24 the way through his entire employment. But Rhonda Johnson
25 gets involved and offers to help him with his paperwork. She

1 helps him get his paperwork sent out; and, finally, his
2 doctor -- not our doctor but his doctor -- sends in the FMLA
3 certification form, and this doctor sends it in in
4 mid-December, and his doctor said that Mr. Barger is
5 incomplete incapacitated starting in October.

6 We didn't fill out the form. The doctor filled out
7 the form. The doctor said he is completely incapacitated
8 beginning in October and that he can't work. He then does get
9 notification from the company, and that's fine. Later on you
10 are going to hear that there was some questions about whether
11 or not he had filled out enough paperwork for his STD and LTD.

12 The company reached out to him in the beginning of
13 January because there was now a question as to when did his
14 leave start, and in response to an e-mail that he was sent,
15 that he was sent by somebody in leave management, here was the
16 question, when did you stop working. An e-mail said, and
17 Mr. Barger's response was, 9/4, my surgery was 9/6. As a
18 result of what Mr. Barger told the company, they went and
19 looked at the MetLife portal; and they showed that, sure
20 enough, MetLife had been working with the doctors and
21 Mr. Barger and determined that his work had stopped on 9/4
22 when he had surgery.

23 So he was sent the second FMLA notice; and it's our
24 position, ladies and gentlemen, that at that point in time he
25 went on a different form of leave. So at the time he wanted

1 to return to work he, was no longer covered by the FMLA; and
2 you will hear more about that.

3 While Mr. Barger is out they do an internal review
4 of his department, of the sales training. A woman by the name
5 of Robin Ording is appointed on an interim basis to take over
6 his job duties. Robin worked in HR, and her skill set was
7 training. She didn't do this full-time. She just bolted it
8 onto her other duties and activities.

9 They looked and they did a review from the bottom
10 up. They went in and they started talking to the workers, the
11 people that worked there; and what did they find? They find
12 that during a time when the company was still looking to turn
13 itself around, that this group was projected to not only stay
14 the same and not go down but they were going to be seven more
15 hirings.

16 But it was a mess. It wasn't well organized. It
17 wasn't well managed by the person who was leading it. So the
18 determination was made, by the way, at that point in time that
19 there was a recommendation that the company did not need
20 somebody earning \$700,000 or so to run a sales training group
21 that could even be shrunk further; and it would be shrunk
22 further, and you are going to hear about that.

23 Mr. Charron, who is the head of GBS -- and, as I
24 said, sales training is in GBS -- Mr. Charron was told orally
25 or verbally these are the results, this organization is much

1 too big, it can become a lot smaller, and we don't need
2 somebody at an SVP level running that department.

3 Later that month Tony Marino and Jeff Hack share an
4 e-mail exchange where they say Mr. Barger can't come back into
5 that job and he doesn't have a choice and that organization is
6 in shambles. It's at this point in time that Mr. Bisignano,
7 that Frank, has decided there is too many layers of
8 management; and they start looking at how can we cut
9 10 percent of the top 300 highest-compensated people, and they
10 looked at it, and it wasn't enough. It wasn't going to
11 achieve the objectives.

12 The company is still in trouble at this point in
13 time. It's gone public, and the price of the shares was
14 actually lower than it was at the time that it went public.
15 They are still in this recovery mode, this restructuring mode.
16 And they make a decision that they are going to focus now on a
17 larger subset. They are going to go to 3,000.

18 Now, Mr. Barger's name started appearing on some
19 lists as early as mid-November as being eligible and maybe on
20 that list for reduction in force because of his salary and
21 what he was doing. And you will see these e-mails and you
22 will see the RIF list that continued throughout November into
23 December and ultimately into January.

24 Then in early January, that is when on January 5 --
25 and you hear a lot of dates in this case, and please try not

1 to get confused. There are so many dates, and we are going to
2 try and get them for you, but what's important to know that in
3 early January that's when the company decided to expand; and
4 over the course of that weekend Mr. Charron, along with Jeff
5 Hack, got their list of their top 10 percent of that 3,000,
6 and they had to make decisions over the weekend who was going
7 to be selected.

8 Mr. Barger reported to Mr. Hack. It was Mr. Hack
9 who determined and put Mr. Barger on the list saying he should
10 be included in the 10 percent of the top 3,000 reduction in
11 force. Mr. Hack gave his list to Mr. Charron, who combined it
12 with the list of people that Mr. Charron was responsible for;
13 and, together, a list of 24 names was submitted. That's how
14 Mr. Barger ended up being part of this reduction; and you are
15 going to hear about the reasons why the company selected him
16 or why he was selected for inclusion. That will be part of
17 the evidence. There was a final RIF.

18 The day after those decisions were made, Mr. Barger
19 shows up at work, meets with Rhonda Johnson; and at this point
20 in time -- and I meant to tell you this -- when the doctor
21 submitted that note that said he was incapacitated, the doctor
22 projected that he was going to be out until March, given what
23 his condition was. He comes back with a note on the 10th and
24 he says, I'm ready to come back to work in a week without any
25 restrictions whatsoever.

1 Rhonda lets the people in management know about
2 this. Rhonda does not know at that time that Mr. Barger has
3 been selected for inclusion in the RIF and he had already been
4 selected for inclusion in the RIF. So two, three days later
5 Mr. Marino asked Ms. Johnson to call Mr. Barger because she
6 has supported him well; and she told him on Friday the 13th
7 that his job position had been eliminated and there would be a
8 package for him.

9 The next day Mr. Marino calls him and tells him the
10 same thing, that his job has been eliminated; and they talked
11 about what his package would look like and things that the
12 company was going to do for him over and above. By the way,
13 there is something else that the company did for Mr. Barger
14 over and above that they did for somebody else.

15 Remember when I told you that Mr. Marino and the
16 company told Mr. Barger that he needed to go out on leave?
17 This was back in November. Well, something else happened two
18 days later. Mr. Barger sent Mr. -- Mr. Barger sent Tony
19 another text message, and that text message said the doctor
20 thinks my cancer might be inoperable. You need to get my
21 family's finances in order, you need to take care of my wife,
22 you need to have my stock transferred to my wife.

23 And here is what the company did, something that
24 they just don't do for other people. This idea that we
25 discriminated and tried to treat him badly. Tony Marino,

1 within 24 hours, went to Frank Bisignano and went to Dan
2 Charron and said I want to pay Mr. Barger his bonus right now.
3 I have just gotten this e-mail from him. He says he might
4 have inoperable cancer.

5 Bonuses aren't normally paid until the next year at
6 a company like First Data. They wait for the year to be done
7 and then they pay it. This is in November.

8 Mr. Marino sent Mr. Barger an e-mail the next day
9 that says we are going to pay your bonus now, we are going to
10 pay it all in cash, \$174,000. Everybody else's bonus was
11 going to be in some cash and some equity in the company. Not
12 for Mr. Barger. And everybody else's bonuses were supposed to
13 be 5 percent less. There was no 5 percent reduction. And
14 Mr. Barger got paid that bonus, something that was done for
15 him, that wasn't done for others.

16 And this is -- when Tony talked to him about the
17 fact that his job was going to be eliminated, Tony said
18 whatever equity in the company, stock in the company you might
19 lose because your job has been eliminated, we are going to
20 write a check to you for that as well.

21 Mr. Barger's employment didn't end on January 13
22 when Ms. Johnson told him his job had been eliminated. The
23 company put him on nonworking notice, and he kept on the
24 payroll for another six weeks at his full salary, for a total
25 of another \$60,000; and they extended the date of his

1 separation until February 28 so that he would vest in another
2 portion of his stock. These are the things that the company
3 did for him in recognition of the service that he had
4 provided, and the kind of thing that the company would try to
5 do for people all along; and you are going to hear testimony
6 on that.

7 Now, Mr. Barger ultimately decides to sue First Data
8 and these four individuals, and normally that's when the story
9 would end. We would be done, and we would then go and start
10 presenting evidence, and that's what would happen; but it's
11 not the end because this case has a twist.

12 Now, when parties sue each other in court, you then
13 engage in something called discovery. What discovery is is
14 that the parties exchange documents back and forth so you can
15 see what each other has, and then parties also take what are
16 known as depositions.

17 And we took Mr. Barger's deposition in my office on
18 August 10 of 2018. He came in, and there was a court reporter
19 just like the court reporter here, and he swore to tell the
20 truth, just like the witnesses will do here; and Mr. Shearer
21 was there at his deposition. And we asked him some questions
22 about his case during that period of time.

23 During that period of time we discovered some
24 evidence that was not known by the company at the time that it
25 happened, and that's why this evidence is called

1 after-acquired evidence, because it was acquired after the
2 time period that it happened. So I asked Mr. Barger, how did
3 it come about that Joe Plumeri and First Data decided to pay
4 you \$30,000 a month to be a consultant.

5 Now, you heard in the opening that Mr. Barger
6 started being a consultant in January of 2017. His consulting
7 agreement is dated -- it's dated in April, but the first date
8 of his consulting is the middle of March of 20 -- not the
9 beginning, the middle of March. March 17 to be exact.

10 I asked him, how did you and Mr. Plumeri agree on
11 \$30,000. He said, I told Mr. Plumeri, I told Joe that I was
12 making 20 to \$25,000 a month. And that's why Joe agreed to
13 pay you 30? He said, yes, that's why Joe did, because I told
14 him what I was making. Mr. Plumeri had no reason to question
15 what Mr. Barger was telling him. They had known each other
16 for 30 years. They were friends. Joe had reached out to him
17 for help.

18 Mr. Barger wasn't making 20 to \$25,000 as a
19 consultant at that time. He wasn't making 20 to \$25,000 a
20 year at that time. In 2013, the year immediately prior to
21 that conversation that he had with Joe Plumeri, he made less
22 than \$20,000 as a consultant in 2013, and he made less than
23 \$20,000 as a consultant in 2012. That was the first
24 after-acquired fact that we learned at the deposition, at that
25 deposition.

1 But then we learned a couple of other ones. You
2 see, as I told you, he became a consultant effective March 17.
3 And they entered into a consulting agreement. It's a standard
4 kind of agreement. If you are going to be a consultant, you
5 enter into one of these agreements, and these agreements tell
6 you what the terms are going to be.

7 And you know what was in there? It said this is the
8 date your consulting is going to start, March 17. It had the
9 \$30,000 number in there, and it also had how he was going to
10 bill, that at the end of the month he would send a bill for
11 the prior month. And there were some other things that were
12 in the standard independent contractor agreement.

13 I asked him in particular about two invoices. The
14 first invoice was dated February 26, 2007 -- 2014. And I
15 asked him what that was for, considering that his consulting
16 hadn't started until three weeks later. And Mr. Barger's
17 response was, well, that must have been for the time that I
18 spent learning about First Data before I became a consultant.
19 There will be testimony that consultants don't bill you for
20 the time that's spent before you become a consultant.

21 But there was another invoice. There was another
22 invoice that was dated June 20 of 2014, and that one was for
23 \$50,000. For \$50,000.

24 Now, you have heard and it is correct that
25 Mr. Barger became a full-time First Data employee and

1 Mr. Plumeri agreed on behalf of the company to pay him,
2 starting in July of 2014, \$480,000 a year, 250,000 cash bonus,
3 and equity. So he was a consultant for three and a half
4 months. And you will see the invoices that he was paid for
5 three and a half months.

6 But this \$50,000 invoice, I didn't know what it was
7 for. It said it was for final services rendered as a
8 consultant, \$50,000. I looked in the employment agreement,
9 and I went through with him the independent contractor
10 agreement, and said where is it provided here that you are
11 able to bill for final consulting services; and he couldn't
12 find the provision. It's not there.

13 And I asked him what the \$50,000 was for. He said
14 it was for his proprietary information, his intellectual
15 property basically. And then I went and pointed out to him
16 that in the independent contractor agreement it provides that
17 he gave First Data a prepaid license to use his information in
18 exchange for the \$30,000 he had already been paid for; and he
19 went and billed the company \$50,000 that got paid.

20 You are going to hear testimony from First Data
21 witnesses that First Data has terminated employees for
22 dishonesty. You are going to hear testimony from First Data
23 witnesses that employees have been terminated for falsifying
24 expense reports. You are going to hear testimony from First
25 Data witnesses that had they known in June of 2014 that

1 Mr. Barger had submitted an invoice for services allegedly
2 rendered before he became a consultant but, more importantly,
3 that he had billed the company \$50,000 for intellectual
4 property that was already covered by the \$30,000 a month fee,
5 his employment would have been terminated at that time.

6 And the judge will instruct you at the end of the
7 case on the law regarding after-acquired evidence, just as
8 Judge Block will instruct you on the law regarding the
9 Americans with Disabilities Act, and the Family Medical Leave
10 Act.

11 Defendants in this case are going to prove at least
12 five things that will prevent Mr. Barger from prevailing on
13 either liability or damages.

14 One: That starting in 2013 that management did what
15 it had to do to try and save 22,000 jobs over time, which
16 included a variety of restructuring, closing locations,
17 investing in technology, and it included at times the need to
18 eliminate jobs like Mr. Barger's.

19 Two: First Data will prove that Dan Charron talked
20 to Mr. Barger and others about his high compensation and that
21 Rhonda Johnson and others talked to Mr. Barger about the need
22 for his replacement; and both of those things happened prior
23 to him being diagnosed with cancer.

24 Three: That First Data placed Mr. Barger on leave
25 in order for him to get better and that they treated him

1 better in a number of ways, including that payment of an
2 all-cash bonus after he told Tony Marino that things were
3 dire.

4 Four: That Mr. Barger's names started appearing on
5 reduction in force lists as early as November of 2016, long
6 before he submitted any request to return to work, and it was
7 done at a time when there had been a review of the sales
8 training group and a determination that the company did not
9 need somebody earning close to \$700,000 running a training
10 group of about 70 people at that time, which had become
11 bloated and was also ineffective.

12 Five: First Data will also prove that Mr. Barger
13 was one of the highest-paid employees and that his inclusion
14 was not improper. There were 361 other individuals who were
15 affected the same way he was, and the evidence will show that
16 he was included not because he had cancer and not because he
17 was on leave and not because he failed -- that he requested
18 the right to return to leave; and also that First Data, the
19 evidence will show, they did not fail to accommodate
20 Mr. Barger's condition.

21 At the end of the day, ladies and gentlemen, we are
22 confident that you will find that the evidence will
23 demonstrate that Mr. Barger cannot prevail on liability
24 against First Data, Frank Bisignano, Dan Charron, Tony Marino,
25 and Rhonda Johnson.

Opening - Eidelman

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1 We want to thank you for your time and your service.
2 And I will just ask you to remember, 362, 362 are the total
3 number of employees who were impacted along with Mr. Barger at
4 the reduction in force that impacted 10 percent of the top
5 3,000 highest-compensated employees at First Data. Thank you.

6 THE COURT: Thank you, Mr. Eidelman.

7 So, folks, you have a good idea now of what you can
8 expect, and I think you also realize why we need you as jurors
9 to decide this case.

10 You know, I find that I'm blessed with having the
11 privilege of being a judge in the federal courthouse; but
12 every day I come to work I learn something new. And you are
13 going to be exposed to learning something probably that you
14 didn't know before as well. So it's always fascinating.

15 And I can tell by the way that you all are listening
16 very carefully that you are going to become experts in this
17 credit card business of ours and learn an awful lot about how
18 credit cards get processed. How interesting.

19 So I have no opinion of the case, and you have no
20 opinion of the case right now. It's a blank slate after the
21 lawyers arguments. Tomorrow, as the saying, goes we start to
22 put meat on the bones, I guess.

23 At 10 o'clock we will have our first witness.

24 And who will be it, Mr. Shearer.

25 MR. SHEARER: I'm going to call Mr. Joe Plumeri

1 first.

2 THE COURT: So be ready at 10:00 o'clock. Get a
3 good night's sleep.

4 Remember just to tell your folks back home about the
5 fact that Judge Block looks like -- I guess it was Brad Pitt I
6 said -- and keep the peace. There is certainly a lot of
7 obviously temptation to talk to people about this case. Maybe
8 people know about this business. I don't know.

9 The Internet obviously has a lot of information.
10 You don't want to check it out. You really have to be like
11 Caesar's wife. Nobody is going to be there to supervise you.
12 We are not going to have marshals standing over you. We are
13 not going to have marshals living with you. So if you really
14 want to find out about things, you obviously can; but you will
15 know the difference and you will realize how important it is
16 for us to really not let the outside influences intrude upon
17 you during the course of this trial.

18 We will see you at 10 o'clock. Let's all be here
19 promptly, and we will see you then.

20 THE CLERK: All rise.

21 (Jury exits.)
22
23

24 THE COURT: Okay. The jury is not here and I signed
25 this request to allow Mr. Jarred to be accommodated, and if

1 anybody needs any accommodations. I don't know whether the
2 federal court comes under the Disabilities Act. I guess it
3 does, but we will certainly try to help anybody who needs
4 help.

5 We will see you folks tomorrow. Does anybody want
6 to put anything on the record before we adjourn for the day?
7 I do. I want to thank all of you for the hard work you did in
8 working out the exhibit list. I think you will find that the
9 effort that was made especially, with the aid of my wonderful
10 law clerk Ty Cohn, is going to pay off in spades because we
11 will be able to move smoothly and efficiently and
12 substantively in the process of this case. We have a few
13 things we will have to sort out during the course of this
14 trial, but we will manage it; and we have come a long way from
15 the time we first met and that blunderbuss exhibit list.

16 So I thank you for your professional cooperation as
17 well because this is a court. See you tomorrow at 10 o'clock,
18 unless anybody wants to say anything. Mr. Shearer?

19 MR. SHEARER: No, Your Honor.

20 THE COURT: Mr. Eidelman?

21 MR. EIDELMAN: No, Your Honor. Thank you.

22 (Trial adjourned to Tuesday, September 17, 2019, at
23 10:00 a.m.)
24
25

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